Senate Committee On

HEALTH CARE

Durell Peaden, Jr., Chair
M. Mandy Dawson, Vice Chair

MEETING PACKET

Wednesday, February 8, 2006
2:00 p.m. – 4:00 p.m.
412 Knott Building

(Please bring this packet to the committee meeting. Duplicate materials will not be available.)

E X P A N D E D A G E N D A

COMMITTEE ON HEALTH CARE

Senator Peaden, CHAIR
Senator Dawson, VICE-CHAIR

DATE: Wednesday, February 8, 2006
TIME: 2:00 p.m. -- 4:00 p.m.
PLACE: The *Pat Thomas Committee Room,* 412 Knott Building

(MEMBERS: Senators Atwater, Fasano, Jones, Miller, Pruitt, Rich, Saunders and Siplin)

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 0976 Geller (Compare H 0067, H 0093, S 0252)	Automated External Defibrillators; revises legislative intent re use of automated external defibrillator; defines such defibrillator as lifesaving defibrillation device; authorizes local government to adopt ordinance to license, permit or inspect such defibrillators; requires DOH to implement educational campaign to inform public about lack of immunity from liability re use of automated external defibrillator devices under certain conditions, etc. Amends 401.2915. HE 02/08/06 JU HA	
2	~~SB 0978~~ ~~Geller~~	~~Automated External Defibrillators~~	Withdrawn from committee and further consideration
3	SB 0248 Constantine	Automated External Defibrillators; requires each private & public high school to have defibrillator on school grounds. HE 02/08/06 ED	
4	SB 0252 Rich ET AL (Similar H 0067, Compare H 0093, S 0976)	Emergency Medical Services; defines terms "youth athletic organization" & "automated external defibrillator device"; provides for grants to local agencies, emergency medical services organizations, & youth athletic organizations to expand use of said devices; requires DOH to administer educational campaign re lack of immunity in use of such device under certain circumstances, etc. Amends 401.107,.111,.113, 768.1325. HE 02/08/06 JU HA	

E X P A N D E D A G E N D A

COMMITTEE ON HEALTH CARE

DATE: Wednesday, February 8, 2006 TIME: 2:00 p.m. -- 4:00 p.m.

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	SB 0274 Jones (Identical H 0111)	Defibrillators in State Parks; encourages state parks to have functioning automated external defibrillator; requires training, maintenance, & location registration; provides immunity from liability under Good Samaritan Act & Cardiac Arrest Survival Act; authorizes Recreation & Parks Div. to adopt rules. Creates 258.0165. HE 02/08/06 EP JU GA	
6	SB 0388 Argenziano (Compare H 0501)	Assisted Care Communities; creates ch. 429, F.S., & transfers specified provisions of ch. 400, F.S. re assisted living facilities, adult family-care homes, & adult day care centers to ch. 429, F.S.; conforms references to changes made by act; requests Division of Statutory Revision to make necessary conforming changes to Florida Statutes. Creates Ch. 429; amends FS. CF 01/10/06 FAVORABLE WITH AMEND 10 HE 02/08/06	
7	SB 0698 Domestic Security	Medical Facilities Info./DOH/OGSR; amends provision re exemption from public-records requirements provided for information concerning medical facilities & laboratories which is maintained by DOH as part of state's plan to defend against terrorism; saves exemption from repeal under OGSR Act; deletes provisions providing for repeal of exemption. Amends 381.95. DS 01/11/06 FAVORABLE HE 02/08/06 GO RC	
8	SB 0700 Domestic Security	Emergency Mgmt. Plans/Hospitals/OGSR; amends provision re exemptions from public-records requirements provided for portions of comprehensive emergency management plans which address hospital's response to terrorism & exemption from public-meetings requirements provided for public meetings which would reveal emergency management plan that is exempt from disclosure; saves exemptions from repeal under OGSR Act, etc. Amends 395.1056. DS 01/11/06 FAVORABLE HE 02/08/06 GO RC	

E X P A N D E D A G E N D A

COMMITTEE ON HEALTH CARE

DATE: Wednesday, February 8, 2006 **TIME: 2:00 p.m. -- 4:00 p.m.**

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	SB 0874 Miller (Identical H 0331)	Medicaid/Air Ambulance Rates; increases Medicaid reimbursement rates for air ambulance transportation to match Medicare rates. Amends 409.905. HE 02/08/06 HA	
10	SB 0972 Rich	Florida KidCare Program; provides for certain children who are ineligible to participate in Florida KidCare program to be eligible for Medikids program or Florida Healthy Kids program; requires that AHCA begin enrollment under revised program criteria by specified date. Amends 409.814. HE 02/08/06 HA WM	

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Care Committee

BILL: SB 976

INTRODUCER: Senator Geller

SUBJECT: Automated External Defibrillators

DATE: January 30, 2006 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HE	**Pre-meeting**
2.			JU	
3.			HA	
4.				
5.				
6.				

I. Summary:

This bill clarifies the legislative intent regarding the use of automated external defibrillators and provides definitions for the terms "automated external defibrillator" (AED) and "defibrillation." The bill creates a criminal offense for certain acts involving tampering with an AED. Local governments are authorized to adopt an ordinance to require a person to obtain a license, permit, or inspection certificate for AEDs and provides for enforcement of such local ordinances. The bill requires the Department of Health to implement an educational campaign to inform persons who acquire an AED that immunity from liability under s. 768.1325, F.S., does not extend to them if they fail to properly maintain and test the AED or fail to provide appropriate training in the use of the AED.

This bill amends s. 401.2915, F.S., and creates one unnumbered section of law.

II. Present Situation:

Automated External Defibrillators

The American Heart Association (AHA) provides the following description of cardiac arrest:

"Cardiac arrest is the sudden, abrupt loss of heart function. The victim may or may not have diagnosed heart disease...Sudden death (also called sudden cardiac death) occurs within minutes after symptoms appear."[1]

[1] See definition of "cardiac arrest" at <http://www.americanheart.org/presenter.jhtml?identifier=4481.>

Time is of the essence in responding to cardiac arrest because brain death begins in just 4 to 6 minutes. Cardiac arrest can be reversed if it is treated within a few minutes with an electric shock to the heart to restore a normal heartbeat—a procedure known as *defibrillation*. According to AHA, a victim's chances of survival are reduced by 7 to 10 percent with every minute that passes without defibrillation, and few attempts at resuscitation succeed after 10 minutes have elapsed.

An AED is an electronic device that can shock a person's heart back into rhythm when he or she is having a cardiac arrest. According to AHA, with early defibrillation of a person in cardiac arrest, the person's possibility of survival jumps to more than 50 percent.

Section 401.2915, F.S., provides the minimum training requirements for an individual who intends to use an AED in cases of cardiac arrest, as follows:

- A person must obtain appropriate training, to include completion of a course in cardiopulmonary resuscitation or successful completion of a basic first aid course that includes cardiopulmonary resuscitation training, and demonstrated proficiency in the use of an AED;
- A person or entity in possession of an AED is encouraged to register with the local emergency medical services medical director the existence and location of the AED; and
- A person who uses an AED is required to activate the emergency medical services system as soon as possible upon use of the AED.

The section does not provide statutory definitions or minimum capabilities for such a device to be deemed an AED.

Immunity Under the Cardiac Arrest Survival Act

Section 768.1325, F.S., the Cardiac Arrest Survival Act, provides immunity from liability for a person who uses or attempts to use an AED in a perceived medical emergency.
Section 768.1325(2)(b), F.S., defines "automated external defibrillator device" to mean a defibrillator device that:

- Is commercially distributed in accordance with the Federal Food, Drug, and Cosmetic Act;
- Is capable of recognizing the presence or absence of ventricular fibrillation, and is capable of determining without intervention by the user of the device whether defibrillation should be performed; and
- Upon determining that defibrillation should be performed, is able to deliver an electrical shock to an individual.

The immunity provided under s. 768.1325, F.S., to persons using or attempting to use an AED does not apply to any harm that was due to the failure of the acquirer of the device to:

- Notify the local emergency medical services medical director of the most recent placement of the AED within a reasonable period of time after the AED is placed;
- Properly maintain and test the AED; or

- Provide appropriate training in the use of the AED to an employee or agent of the acquirer when the employee or agent was the person who used the AED on the victim, except such requirement of training does not apply if: the employee or agent was not an employee or agent who would have been reasonably expected to use the AED; or the period of time elapsing between the engagement of the person as an employee or agent and the occurrence of the harm, or between the acquisition of the AED and the occurrence of the harm in any case in which the AED was acquired after engagement of the employee or agent, was not a reasonably sufficient period in which to provide the training.

The immunity under s. 768.1325, F.S., does not apply to a person if:

- The harm involved was caused by that person's willful or criminal misconduct, gross negligence, reckless disregard or misconduct, or a conscious, flagrant indifference to the rights or safety of the victim who was harmed;
- The person is a licensed or certified health professional who used the AED while acting within the scope of the license or certification of the health professional and within the scope of the employment or agency of the professional;
- The person is a hospital, clinic, or other entity whose primary purpose is providing health care directly to patients, and the harm was caused by an employee or agent of the entity who used the device while acting within the scope of the employment or agency of the employee or agent;
- The person is an acquirer of the AED who leased the device to a health care entity, or who otherwise provided the AED to such entity for compensation without selling the device to the entity, and the harm was caused by an employee or agent of the entity who used the AED while acting within the scope of the employment or agency of the employee or agent; or
- The person is the manufacturer of the AED.

Immunity under the Good Samaritan Act

Section 768.13, F.S., the "Good Samaritan Act," provides immunity from civil liability to:

- Any persons, including those licensed to practice medicine, who gratuitously and in good faith render emergency care or treatment either in direct response to emergency situations related to and arising out of a public health emergency declared pursuant to s. 381.00315, F.S., or a state of emergency which has been declared pursuant to s. 252.36, F.S., or at the scene of an emergency outside of a hospital, doctor's office, or other place having proper medical equipment. The immunity applies if the person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.

- Any health care provider, including a licensed hospital providing emergency services pursuant to federal or state law. The immunity applies to damages as a result of any act or omission of providing medical care or treatment, including diagnosis, which occurs prior to the time that the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient, unless surgery is required as a result of the emergency, in which case the immunity applies to any act or omission of providing medical care or treatment

which occurs prior to the stabilization of the patient following surgery, or which is related to the original medical emergency. The act does not extend immunity from liability to acts of medical care or treatment under circumstances demonstrating a reckless disregard for the consequences so as to affect the life or health of another.

- Any health care practitioner who is in a hospital attending to a patient of his or her practice or for business or personal reasons unrelated to direct patient care, and who voluntarily responds to provide care or treatment to a patient with whom at that time the practitioner does not have a then-existing health care patient-practitioner relationship, and when such care or treatment is necessitated by a sudden or unexpected situation or by an occurrence that demands immediate medical attention, unless that care or treatment is proven to amount to conduct that is willful and wanton and would likely result in injury so as to affect the life or health of another. The immunity extended to health care practitioners does not apply to any act or omission of providing medical care or treatment unrelated to the original situation that demanded immediate medical attention.

III. Effect of Proposed Changes:

This bill amends s. 401.2915, F.S., to establish the Legislature's intent to encourage training in lifesaving first aid, set standards for the use of AEDs, and encourage their use. The term "automated external defibrillator" is defined as a lifesaving device that:

- Is commercially distributed as a defibrillation device in accordance with the Federal Food, Drug, and Cosmetic Act;
- Is capable of recognizing the presence or absence of ventricular fibrillation and is capable of determining, without intervention by the user of the device, if defibrillation should be performed; and
- Is capable of delivering an electrical shock to an individual, upon determining that defibrillation should be performed.

The bill defines *defibrillation* as the administration of a controlled electrical charge to the heart to restore a viable cardiac rhythm.

The bill creates a criminal offense for a person who intentionally or willfully tampers with or otherwise renders an AED inoperative, except during such time as the AED is being serviced, tested, repaired, or recharged, or except pursuant to a court order; or obliterates the serial number on an AED for purposes of falsifying service records. A person who commits the offense is liable for a first-degree misdemeanor, which is punishable by imprisonment for up to 1 year and the imposition of fine of up to $1,000.

The bill authorizes local governments to require a person to obtain a license, permit, or inspection certificate regarding AEDs. The ordinance may provide for enforcement methods authorized by s. 162.22, F.S., relating to enforcement methods for violation of municipal ordinances, and may provide that it is an infraction or a criminal offense for any person to intentionally or willfully:

- Fail to properly service, recharge, repair, test, or inspect an AED;

- Use the license, permit, or inspection certificate of another person to service, recharge, repair, test, or inspect an AED;
- Hold a permit or inspection certificate and allow another person to use that permit or certificate number to service, recharge, repair, test, or inspect an AED; or
- Use or permit the use of any license, permit, or inspection certificate by any individual or organization other than the one to whom the license, permit, or inspection certificate is issued to service, recharge, repair, test, or inspect an AED.

The bill requires the Department of Health to implement an educational campaign to inform any person who acquires an AED that his or her immunity from liability under Florida law for harm resulting from the use or attempted use of the AED does not apply if he or she fails to properly maintain and test the device or fails to provide appropriate training in the use of the device to an agent or employee when the employee or agent was the person who used the AED on the victim, with specified exceptions.

The bill would take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Health will incur costs to implement the educational campaign to inform persons regarding the immunity from liability for AEDs under applicable Florida

law that is required by the bill. The department has indicated that fiscal impact of bill is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The definition of "automated external defibrillator" proposed in Senate Bill 976 is somewhat different from the definition in s. 768.1325, F.S., the Cardiac Survival Arrest Act. "Defibrillation" is not currently defined in s. 768.1325, F.S. It is unclear whether the definition of "automated external defibrillator" should be consistent between the two provisions of law. An option that the Department of Health suggests is to define "automated external defibrillator" by referencing the existing definition in s. 768.1325, F.S.

VIII. Summary of Amendments:

None.

CHAMBER ACTION

Senate House

HEALTH CARE COMMITTEE

DATE: 1:06 p.m.

TIME: 2/7/06

The Committee on Health Care (Rich) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Section 401.2915, Florida Statutes, is amended to read:

401.2915 Automated external defibrillators.--It is the intent of the Legislature that an automated external defibrillator may be used by any person for the purpose of saving the life of another person in cardiac arrest. In order to achieve that goal, the Legislature intends to encourage training in lifesaving first aid and set standards for and encourage the use of automated external defibrillators.

(1) As used in this section, the term:

(a) "Automated external defibrillator" means a device as defined in s. 768.1325(2)(b).

(b) "Defibrillation" means the administration of a controlled electrical charge to the heart to restore a viable

cardiac rhythm.

(2) In order to ensure public health and safety:

(a) ~~(1)~~ All persons who use an automated external defibrillator must obtain appropriate training, to include completion of a course in cardiopulmonary resuscitation or successful completion of a basic first aid course that includes cardiopulmonary resuscitation training, and demonstrated proficiency in the use of an automated external defibrillator.

(b) ~~(2)~~ Any person or entity in possession of an automated external defibrillator is encouraged to register with the local emergency medical services medical director the existence and location of the automated external defibrillator.

(c) ~~(3)~~ Any person who uses an automated external defibrillator shall activate the emergency medical services system as soon as possible upon use of the automated external defibrillator.

(3) Any person who intentionally or willfully:

(a) Tampers with or otherwise renders an automated external defibrillator inoperative, except during such time as the automated external defibrillator is being serviced, tested, repaired, recharged, or inspected or except pursuant to court order; or

(b) Obliterates the serial number on an automated external defibrillator for purposes of falsifying service records,

commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Paragraph (a) does not apply to the owner of the automated external defibrillator or

the owner's agent.

(4) Each local and state law enforcement vehicle may carry an automated external defibrillator.

Section 2. The Department of Health shall implement an educational campaign to inform any person who acquires an automated external defibrillator device that his or her immunity from liability under s. 768.1325, Florida Statutes, for harm resulting from the use or attempted use of the device, does not apply if he or she fails to:

(1) Properly maintain and test the device; or

(2) Provide appropriate training in the use of the device to his or her employee or agent when the employee or agent was the person who used the device on the victim, except as provided in s. 768.1325, Florida Statutes.

Section 3. This act shall take effect July 1, 2006.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete everything before the enacting clause

and insert:

A bill to be entitled

An act relating to automated external defibrillators; amending s. 401.2915, F.S.; revising legislative intent with respect to the use of an automated external defibrillator; defining the terms "automated external defibrillator" and "defibrillation"; providing that it is a first-degree misdemeanor for a person to commit certain acts involving the

misuse of an automated external defibrillator; providing penalties and an exception; requiring the Department of Health to implement an educational campaign to inform the public about the lack of immunity from liability regarding the use of automated external defibrillators under certain conditions; providing an effective date.

2

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Care Committee

BILL: SB 978

INTRODUCER: Senator Geller

SUBJECT: Automated External Defibrillators/Business Entities

DATE: January 31, 2006 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe BJM	Wilson gw	HE	**Pre-meeting**
2.			CM	
3.			JU	
4.			HA	
5.				
6.				

I. Summary:

The bill authorizes any business entity defined under s. 606.03, F.S., to have an automated external defibrillator (AED) on the premises. Section 606.03, F.S., defines "business entity" to mean any form of corporation, partnership, association, cooperative, joint venture, business trust, or sole proprietorship that conducts business in Florida. The business entity must ensure that employees are properly trained in the operation and maintenance of the AED. The training must be provided by the local emergency medical services provider at no cost to the business. The use of AEDs by employees must be covered under the provisions of the Good Samaritan Act and the Cardiac Arrest Survival Act.

The bill exempts the cost of an AED purchased by a business entity from sales tax.

This bill amends sections 401.2915 and 212.08, Florida Statutes.

II. Present Situation:

Cardiac Arrest/Automated External Defibrillators

The American Heart Association (AHA) provides the following description of cardiac arrest:

> "Cardiac arrest is the sudden, abrupt loss of heart function. The victim may or may not have diagnosed heart disease...Sudden death (also called sudden cardiac death) occurs within minutes after symptoms appear."[1]

[1] See definition of "cardiac arrest" at <http://www.americanheart.org/presenter.jhtml?identifier=4481.>

Time is of the essence in responding to cardiac arrest because brain death begins in just 4 to 6 minutes. Cardiac arrest can be reversed if it is treated within a few minutes with an electric shock to the heart to restore a normal heartbeat—a procedure known as *defibrillation*. According to AHA, a victim's chances of survival are reduced by 7 to 10 percent with every minute that passes without defibrillation, and few attempts at resuscitation succeed after 10 minutes have elapsed.

An AED is an electronic device that can shock a person's heart back into rhythm when he or she is having a cardiac arrest. According to AHA, with early defibrillation of a person in cardiac arrest, the person's possibility of survival jumps to more than 50 percent.

Section 401.2915, F.S., provides the minimum training requirements for an individual who intends to use an AED in cases of cardiac arrest, as follows:

- A person must obtain appropriate training, to include completion of a course in cardiopulmonary resuscitation or successful completion of a basic first aid course that includes cardiopulmonary resuscitation training, and demonstrated proficiency in the use of an AED;
- A person or entity in possession of an AED is encouraged to register with the local emergency medical services medical director the existence and location of the AED; and
- A person who uses an AED is required to activate the emergency medical services system as soon as possible upon use of the AED.

The section does not provide statutory definitions or minimum capabilities for such a device to be deemed an AED.

Immunity Under the Cardiac Arrest Survival Act

Section 768.1325, F.S., the Cardiac Arrest Survival Act, provides immunity from liability for a person who uses or attempts to use an AED in a perceived medical emergency. The immunity provided under s. 768.1325, F.S., does not apply to any harm that was due to the failure of the acquirer of the device to:

- Notify the local emergency medical services medical director of the most recent placement of the AED within a reasonable period of time after the AED is placed;
- Properly maintain and test the AED; or
- Provide appropriate training in the use of the AED to an employee or agent of the acquirer when the employee or agent was the person who used the AED on the victim, except such requirement of training does not apply if: the employee or agent was not an employee or agent who would have been reasonably expected to use the AED; or the period of time elapsing between the engagement of the person as an employee or agent and the occurrence of the harm, or between the acquisition of the AED and the occurrence of the harm in any case in which the AED was acquired after engagement of the employee or agent, was not a reasonably sufficient period in which to provide the training.

The immunity under s. 768.1325, F.S., does not apply to a person if:

- The harm involved was caused by that person's willful or criminal misconduct, gross negligence, reckless disregard or misconduct, or a conscious, flagrant indifference to the rights or safety of the victim who was harmed;
- The person is a licensed or certified health professional who used the AED while acting within the scope of the license or certification of the health professional and within the scope of the employment or agency of the professional;
- The person is a hospital, clinic, or other entity whose primary purpose is providing health care directly to patients, and the harm was caused by an employee or agent of the entity who used the device while acting within the scope of the employment or agency of the employee or agent;
- The person is an acquirer of the AED who leased the device to a health care entity, or who otherwise provided the AED to such entity for compensation without selling the device to the entity, and the harm was caused by an employee or agent of the entity who used the AED while acting within the scope of the employment or agency of the employee or agent; or
- The person is the manufacturer of the AED.

Immunity under the Good Samaritan Act

Section 768.13, F.S., the "Good Samaritan Act," provides immunity from civil liability to:

- Any persons, including those licensed to practice medicine, who gratuitously and in good faith render emergency care or treatment either in direct response to emergency situations related to and arising out of a public health emergency declared pursuant to s. 381.00315, F.S., or a state of emergency which has been declared pursuant to s. 252.36, F.S., or at the scene of an emergency outside of a hospital, doctor's office, or other place having proper medical equipment. The immunity applies if the person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.

- Any health care provider, including a licensed hospital providing emergency services pursuant to federal or state law. The immunity applies to damages as a result of any act or omission of providing medical care or treatment, including diagnosis, which occurs prior to the time that the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient, unless surgery is required as a result of the emergency, in which case the immunity applies to any act or omission of providing medical care or treatment which occurs prior to the stabilization of the patient following surgery, or which is related to the original medical emergency. The act does not extend immunity from liability to acts of medical care or treatment under circumstances demonstrating a reckless disregard for the consequences so as to affect the life or health of another.

- Any health care practitioner who is in a hospital attending to a patient of his or her practice or for business or personal reasons unrelated to direct patient care, and who voluntarily responds to provide care or treatment to a patient with whom at that time the practitioner does not have a then-existing health care patient-practitioner relationship, and

when such care or treatment is necessitated by a sudden or unexpected situation or by an occurrence that demands immediate medical attention, unless that care or treatment is proven to amount to conduct that is willful and wanton and would likely result in injury so as to affect the life or health of another. The immunity extended to health care practitioners does not apply to any act or omission of providing medical care or treatment unrelated to the original situation that demanded immediate medical attention.

Florida Business Coordination Act

Chapter 606, F.S., may be cited as the "Florida Business Coordination Act." The intent of the act is to establish a master business index within the Department of State and to facilitate a reporting mechanism, which consolidates and coordinates business entity licensing and reporting requirements whenever possible. Section 606.03, F.S., defines "business entity" to mean any form of corporation, partnership, association, cooperative, joint venture, business trust, or sole proprietorship that conducts business in Florida.

Sales Tax Exemptions

Chapter 212, F.S., the "Florida Revenue Act of 1949," imposes taxes on sales, use, and other transactions. Section 212.08(7), F.S., provides miscellaneous sales tax exemptions.

III. Effect of Proposed Changes:

Section 1. Amends s. 401.2915, F.S., to provide that any business entity may have an AED on the premises and must ensure that employees are properly trained in the operation and maintenance of the AED. The training must be provided by the local emergency medical services provider at no cost to the business. The use of AEDs by employees must be covered under the provisions of ss. 768.13 and 768.1325, F.S., (the Good Samaritan Act and the Cardiac Arrest Survival Act, respectively).

Section 2. Amends s. 212.08(7), F.S., to exempt the cost of an AED purchased by a business entity as defined in s. 606.03, F.S., from sales tax.

Section 3. Provides an effective date of July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18, Article VII of the State Constitution provides that "[n]o county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and unless: funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the Legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority of the governing body of such county or municipality;

the law requiring such expenditure is approved by two-thirds of the membership in each house of the Legislature; the expenditure is required to comply with a law that applies to all persons similarly situated, including state and local governments; or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance." The bill requires local emergency medical services providers (governments or entities with which local governments contract to provide such services) to provide AED training to the employees of business entities with no cost to the business entity. Local governments will also incur costs for their vicarious liability, which results from any harm due to the training of business entity employees, and will incur the costs of any litigation or risk management activities that the providers organize to manage their risk in this endeavor.[2] To the extent that local governments will be required to spend funds or to take action, requiring the expenditure of funds the bill must comply with the requirements of s. 18, Art. VII of the State Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not yet considered the impact of Senate Bill 976. For similar legislation that was filed last year, the Revenue Estimating Conference estimated that the bill would result in a recurring loss of $1.7 million of general revenue funds annually in state sales tax and a recurring loss of $500,000 in local sales tax collected for an annual recurring loss of $2.2 million.

B. Private Sector Impact:

Business entities that acquire an AED and that fail to comply with the requirements of ss. 768.13 and 768.1325, F.S., may still be liable.

C. Government Sector Impact:

Local emergency medical services providers will bear costs associated with training the employees of any business entity that acquires an AED. Such local emergency medical services providers will also incur costs for their vicarious liability, which results from any harm due to the training of business entity employees, and will incur the costs of any

[2] See Black's Law Dictionary (7th ed. 1999) which defines vicarious liability as liability that a supervisory party bears for the actionable conduct of a subordinate or associate because of the relationship between the two parties.

litigation or risk management activities that the providers organize to manage their risk in this endeavor.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Care Committee

BILL: SB 248

INTRODUCER: Senator Constantine

SUBJECT: Automated External Defibrillators/High Schools

DATE: February 1, 2006 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HE	**Pre-meeting**
2.			ED	
3.				
4.				
5.				
6.				

I. Summary:

The bill requires each private and public high school in Florida to have an operational automated external defibrillator (AED) on the high school grounds.

This bill creates one undesignated section of law.

II. Present Situation:

Cardiac Arrest/Automated External Defibrillators

The American Heart Association (AHA) provides the following description of cardiac arrest:

> "Cardiac arrest is the sudden, abrupt loss of heart function. The victim may or may not have diagnosed heart disease...Sudden death (also called sudden cardiac death) occurs within minutes after symptoms appear."[1]

Time is of the essence in responding to cardiac arrest because brain death begins in just 4 to 6 minutes. Cardiac arrest can be reversed if it is treated within a few minutes with an electric shock to the heart to restore a normal heartbeat—a procedure known as *defibrillation*. According to AHA, a victim's chances of survival are reduced by 7 to 10 percent with every minute that passes without defibrillation, and few attempts at resuscitation succeed after 10 minutes have elapsed.

[1] See definition of "cardiac arrest" at <http://www.americanheart.org/presenter.jhtml?identifier=4481.>

An AED is an electronic device that can shock a person's heart back into rhythm when he or she is having a cardiac arrest. According to AHA, with early defibrillation of a person in cardiac arrest, the person's possibility of survival jumps to more than 50 percent.

Section 401.2915, F.S., provides the minimum training requirements for an individual who intends to use an AED in cases of cardiac arrest, as follows:

- A person must obtain appropriate training, to include completion of a course in cardiopulmonary resuscitation or successful completion of a basic first aid course that includes cardiopulmonary resuscitation training, and demonstrated proficiency in the use of an AED;
- A person or entity in possession of an AED is encouraged to register with the local emergency medical services medical director the existence and location of the AED; and
- A person who uses an AED is required to activate the emergency medical services system as soon as possible upon use of the AED.

The section does not provide statutory definitions or minimum capabilities for such a device to be deemed an AED.

Immunity Under the Cardiac Arrest Survival Act

Section 768.1325, F.S., the Cardiac Arrest Survival Act, provides immunity from liability for a person who uses or attempts to use an AED in a perceived medical emergency.
Section 768.1325(2)(b), F.S., defines "automated external defibrillator device" to mean a defibrillator device that:

- Is commercially distributed in accordance with the Federal Food, Drug, and Cosmetic Act;
- Is capable of recognizing the presence or absence of ventricular fibrillation, and is capable of determining without intervention by the user of the device whether defibrillation should be performed; and
- Upon determining that defibrillation should be performed, is able to deliver an electrical shock to an individual.

The immunity provided under s. 768.1325, F.S., to persons using or attempting to use an AED does not apply to any harm that was due to the failure of the acquirer of the device to:

- Notify the local emergency medical services medical director of the most recent placement of the AED within a reasonable period of time after the AED is placed;
- Properly maintain and test the AED; or
- Provide appropriate training in the use of the AED to an employee or agent of the acquirer when the employee or agent was the person who used the AED on the victim, except such requirement of training does not apply if: the employee or agent was not an employee or agent who would have been reasonably expected to use the AED; or the period of time elapsing between the engagement of the person as an employee or agent and the occurrence of the harm, or between the acquisition of the AED and the

occurrence of the harm in any case in which the AED was acquired after engagement of the employee or agent, was not a reasonably sufficient period in which to provide the training.

The immunity under s. 768.1325, F.S., does not apply to a person if:

- The harm involved was caused by that person's willful or criminal misconduct, gross negligence, reckless disregard or misconduct, or a conscious, flagrant indifference to the rights or safety of the victim who was harmed;
- The person is a licensed or certified health professional who used the AED while acting within the scope of the license or certification of the health professional and within the scope of the employment or agency of the professional;
- The person is a hospital, clinic, or other entity whose primary purpose is providing health care directly to patients, and the harm was caused by an employee or agent of the entity who used the device while acting within the scope of the employment or agency of the employee or agent;
- The person is an acquirer of the AED who leased the device to a health care entity, or who otherwise provided the AED to such entity for compensation without selling the device to the entity, and the harm was caused by an employee or agent of the entity who used the AED while acting within the scope of the employment or agency of the employee or agent; or
- The person is the manufacturer of the AED.

Immunity under the Good Samaritan Act

Section 768.13, F.S., the "Good Samaritan Act," provides immunity from civil liability to:

- Any persons, including those licensed to practice medicine, who gratuitously and in good faith render emergency care or treatment either in direct response to emergency situations related to and arising out of a public health emergency declared pursuant to s. 381.00315, F.S., or a state of emergency which has been declared pursuant to s. 252.36, F.S., or at the scene of an emergency outside of a hospital, doctor's office, or other place having proper medical equipment. The immunity applies if the person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.

- Any health care provider, including a licensed hospital providing emergency services pursuant to federal or state law. The immunity applies to damages as a result of any act or omission of providing medical care or treatment, including diagnosis, which occurs prior to the time that the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient, unless surgery is required as a result of the emergency, in which case the immunity applies to any act or omission of providing medical care or treatment which occurs prior to the stabilization of the patient following surgery, or which is related to the original medical emergency. The act does not extend immunity from liability to acts of medical care or treatment under circumstances demonstrating a reckless disregard for the consequences so as to affect the life or health of another.

- Any health care practitioner who is in a hospital attending to a patient of his or her practice or for business or personal reasons unrelated to direct patient care, and who voluntarily responds to provide care or treatment to a patient with whom at that time the practitioner does not have a then-existing health care patient-practitioner relationship, and when such care or treatment is necessitated by a sudden or unexpected situation or by an occurrence that demands immediate medical attention, unless that care or treatment is proven to amount to conduct that is willful and wanton and would likely result in injury so as to affect the life or health of another. The immunity extended to health care practitioners does not apply to any act or omission of providing medical care or treatment unrelated to the original situation that demanded immediate medical attention.

School Health

Section 381.0056, F.S., provides requirements for the school health services program. The Department of Health has the responsibility, in cooperation with the Department of Education, to supervise the administration of the school health services program and perform periodic program reviews. The principal at each school has immediate supervisory authority over the health personnel working in the school. Each county health department must develop, jointly with the district school board and the local school health advisory committee, a school health services plan that must include, at a minimum, provisions outlined in s. 381.0056, F.S., which include meeting emergency health needs in each school. "Emergency health needs" is defined to mean the onsite management and aid for illness or injury pending the student's return to the classroom or release to a parent, guardian, designated friend, or designated health care provider.

Federal Legislation on AEDs in Schools

The Automatic Defibrillation in Adam's Memory Act was passed by Congress and signed into law on July 1, 2003.[2] The legislation is intended to encourage schools to have the equipment and trained expertise to restart hearts in emergencies. The Act calls for establishment of a clearinghouse to provide information to increase access to defibrillation in schools and allows use of grant funds under the Public Health Service Act to support the clearinghouse. The legislation has not yet been funded.

III. Effect of Proposed Changes:

The bill requires each private and public high school in Florida to have an operational automated external defibrillator on the high school grounds.

The effective date of the bill is July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

[2] See Public Law 108-41, 117 Stat. 839.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the Division of Emergency Medical Operations within the Department of Health, concerning bids for AEDs, it is estimated that each AED will cost between $800 and $1,700. These costs are for the AED only and do not include extra parts or maintenance. Private schools may incur costs to purchase an AED unless a defibrillator is donated. A layperson may be trained to use an AED in 5 to 6 hours.

C. Government Sector Impact:

According to the Division of Emergency Medical Operations within the Department of Health, concerning bids for AEDs, it is estimated that each AED will cost between $800 and $1,700. These costs are for the AED only and do not include extra parts or maintenance. The Department of Education has indicated that, in 2005-06, there were 671 public senior high schools and 86 charter schools that include high school grades. Some school districts have already placed AEDs in each school, according to the Department of Education. School districts may incur costs to purchase an AED unless a defibrillator is donated. A layperson may be trained to use an AED in 5 to 6 hours.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

CHAMBER ACTION

Senate House

HEALTH CARE COMMITTEE
DATE: 2/7/06
TIME: 9:10 a.m.

The Committee on Health Care (Fasano) recommended the following amendment:

Senate Amendment (with title amendment)

On page 1, lines 10-12, delete those lines

and insert:

Section 1. Each high school that is a member of the Florida High School Athletic Association shall have an operational defibrillator on the high school grounds. Public and private partnerships are encouraged to cover the cost associated with the purchase and placement of the defibrillator and training in the use of the defibrillator.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

On page 1, lines 3-5, delete those lines

and insert:

defibrillators; requiring certain high schools

to have a defibrillator on the school grounds; encouraging public and private partnerships to cover certain costs associated with defibrillators; providing an effective

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Care Committee

BILL: SB 252

INTRODUCER: Senator Rich

SUBJECT: Emergency Medical Services

DATE: January 31, 2006 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe BJM	Wilson JW	HE	**Pre-meeting**
2.			JU	
3.			HA	
4.				
5.				
6.				

I. Summary:

The bill provides the Department of Health (DOH or department) authority to award emergency medical services grants to youth athletic organizations and allows individual boards of county commissioners to distribute county emergency medical services grant funds to youth athletic organizations. The bill defines "youth athletic organization" as a private not-for-profit organization that promotes and provides organized athletic activities to youth.

"Automated external defibrillator device" is defined to have the same meaning as the term is defined in the Cardiac Arrest Survival Act. The Cardiac Arrest Survival Act is revised to provide that the immunity under that act does not apply to a person who acquires an automated external defibrillator (AED) device who fails to maintain and test the device or fails to provide appropriate training in the use of the device to his or her employee or agent when the employee or agent is the person who used the device on the victim. The bill requires DOH to educate persons who acquire an AED about the liability provisions of the Cardiac Arrest Survival Act.

This bill amends sections 401.107, 401.111, 401.113, and 765.1325, Florida Statutes.

II. Present Situation:

Cardiac Arrest/Automated External Defibrillators

The American Heart Association (AHA) provides the following description of cardiac arrest:

> "Cardiac arrest is the sudden, abrupt loss of heart function. The victim may or may not have diagnosed heart disease...Sudden death (also called sudden cardiac death) occurs within minutes after symptoms appear."[1]

Time is of the essence in responding to cardiac arrest because brain death begins in just 4 to 6 minutes. Cardiac arrest can be reversed if it is treated within a few minutes with an electric shock to the heart to restore a normal heartbeat—a procedure known as *defibrillation*. According to AHA, a victim's chances of survival are reduced by 7 to 10 percent with every minute that passes without defibrillation, and few attempts at resuscitation succeed after 10 minutes have elapsed.

An automated external defibrillator (AED) is an electronic device that can shock a person's heart back into rhythm when he or she is having a cardiac arrest. According to AHA, with early defibrillation of a person in cardiac arrest, the person's possibility of survival jumps to more than 50 percent.

Section 401.2915, F.S., provides the minimum training requirements for an individual who intends to use an AED in cases of cardiac arrest, as follows:

- A person must obtain appropriate training, to include completion of a course in cardiopulmonary resuscitation or successful completion of a basic first aid course that includes cardiopulmonary resuscitation training, and demonstrated proficiency in the use of an AED;
- A person or entity in possession of an AED is encouraged to register with the local emergency medical services medical director the existence and location of the AED; and
- A person who uses an AED is required to activate the emergency medical services system as soon as possible upon use of the AED.

The section does not provide statutory definitions or minimum capabilities for such a device to be deemed an AED.

Immunity Under the Cardiac Arrest Survival Act

Section 768.1325, F.S., the Cardiac Arrest Survival Act, provides immunity from liability for a person who uses or attempts to use an AED in a perceived medical emergency. The immunity provided under s. 768.1325, F.S., to persons using or attempting to use an AED does not apply to any harm that was due to the failure of the acquirer of the device to:

- Notify the local emergency medical services medical director of the most recent placement of the AED within a reasonable period of time after the AED is placed;
- Properly maintain and test the AED; or
- Provide appropriate training in the use of the AED to an employee or agent of the acquirer when the employee or agent was the person who used the AED on the victim,

[1] See definition of "cardiac arrest" at <http://www.americanheart.org/presenter.jhtml?identifier=4481.>

except such requirement of training does not apply if: the employee or agent was not an employee or agent who would have been reasonably expected to use the AED; or the period of time elapsing between the engagement of the person as an employee or agent and the occurrence of the harm, or between the acquisition of the AED and the occurrence of the harm in any case in which the AED was acquired after engagement of the employee or agent, was not a reasonably sufficient period in which to provide the training.

The immunity under s. 768.1325, F.S., does not apply to a person if:

- The harm involved was caused by that person's willful or criminal misconduct, gross negligence, reckless disregard or misconduct, or a conscious, flagrant indifference to the rights or safety of the victim who was harmed;
- The person is a licensed or certified health professional who used the AED while acting within the scope of the license or certification of the health professional and within the scope of the employment or agency of the professional;
- The person is a hospital, clinic, or other entity whose primary purpose is providing health care directly to patients, and the harm was caused by an employee or agent of the entity who used the device while acting within the scope of the employment or agency of the employee or agent;
- The person is an acquirer of the AED who leased the device to a health care entity, or who otherwise provided the AED to such entity for compensation without selling the device to the entity, and the harm was caused by an employee or agent of the entity who used the AED while acting within the scope of the employment or agency of the employee or agent; or
- The person is the manufacturer of the AED.

Emergency Medical Services Grant Program

Part II, chapter 401, F.S., specifies requirements for emergency medical services grants. The part provides definitions. "Emergency medical services" is defined to mean the activities or services to prevent or treat a sudden critical illness or injury and to provide emergency medical care and prehospital emergency medical transportation to sick, injured, or otherwise incapacitated persons in Florida. "Local agency" is defined as the board of county commissioners. "Emergency medical services organizations" is defined as public or private entities involved in emergency medical services systems. The Emergency Medical Services Grant Program was established to assist governmental and private agencies within a service area to respond cooperatively in order to finance the systematic provision of emergency medical services to all citizens.

Under s. 401.111, F.S., DOH is authorized to dispense grant funds to local agencies and emergency medical services organizations from the Emergency Medical Services Trust Fund according to the distribution formula provided in paragraphs 401.113(a) and (b), F.S., as follows:

- Forty-five percent of the monies collected by DOH must be *divided among the counties* according to the proportion of the combined amount deposited in the trust fund from the county. An individual board of county commissioners may distribute these funds to emergency medical service organizations within the county, as it deems appropriate.

- Forty percent of the monies collected by DOH are for making matching grants *to local agencies, municipalities, and emergency medical services organizations* for the purpose of conducting research, increasing existing levels of emergency medical services evaluation, community education, injury prevention programs, and training in cardiopulmonary resuscitation and other lifesaving and first aid techniques. At least 90 percent of these monies must be made available on a cash-matching basis. Grants to *local agencies, municipalities, and emergency medical services organizations* must be contingent upon the recipient providing a cash sum equal to 25 percent of the total approved grant amount. No more than 10 percent of these moneys must be made available to rural emergency medical services, and these monies may be used for improvement, expansion, or continuation of services provided. A grant to rural emergency medical services must be contingent upon the recipient providing a cash sum equal to no more than 10 percent of the total approved grant.

According to DOH, grant applications are thoroughly reviewed. DOH receives the majority of applications for AEDs from licensed emergency medical services providers for purchase and distribution to agencies and organizations in their service areas that have a significant number of cardiac-related responses. Grant applications are reviewed and scored by a panel of EMS providers. Applications that receive a favorable score are provided funds to purchase the equipment.

III. Effect of Proposed Changes:

Section 1. Amends s. 401.107, F.S., relating to definitions for emergency medical services grants, to define "youth athletic organization" as a private not-for-profit organization that promotes and provides organized athletic activities to youth. "Automated external defibrillator device" is defined to have the same meaning as the term is defined in the Cardiac Arrest Survival Act.[2]

Section 2. Amends s. 401.111, F.S., relating to the Emergency Medical Services Grant Program, to include youth athletic organizations as eligible participants in the Emergency Medical Services Grant Program, and provides that the grants must be designed to assist youth athletic organizations that work in conjunction with local emergency medical services organizations to expand the use of automated external defibrillators in the community.

Section 3. Amends s. 401.113, F.S., relating to DOH powers and duties under the Emergency Medical Services Grant Program, to authorize DOH to dispense funds contained in the Emergency Medical Services Trust Fund to youth athletic organizations and to authorize individual boards of county commissioners to distribute funding under the program to youth athletic organizations.

Section 4. Amends s. 768.1325, F.S., the Cardiac Arrest Survival Act, to provide that the immunity under that act does not apply to a person who is an acquirer of an AED device who failed to maintain and test the device or failed to provide appropriate training in the use of the device to his or her employee or agent when the employee or agent is the person who used the

[2] See s. 768.1325(2)(b), F.S.

device on the victim. The bill requires DOH to administer an educational program for persons who acquire AEDs regarding the liability provisions of the Cardiac Arrest Survival Act.

Section 5. Provides an effective date of July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under the bill, youth athletic organizations will be eligible for grant funds to purchase AEDs. If youth athletic organizations apply for a grant to obtain an AED, they will reduce their costs for obtaining the device. The department does not have an estimate of how many youth athletic organizations may apply for and receive grant funding under the bill.

C. Government Sector Impact:

The department has indicated that there may be a fiscal impact relating to the initial implementation and the ongoing maintenance of the educational program required under the bill to inform acquirers and users of AEDs of the circumstances under which they could lose immunity when operating an AED.

To the extent that the bill increases the number of entities authorized to participate in the Emergency Medical Services Grant Program, the department anticipates a large potential for a substantial increase in grant applications. The department reports that there may be a substantial increase in its workload to evaluate and process applications.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Care Committee

BILL: SB 274

INTRODUCER: Senator Jones

SUBJECT: Automated External Defibrillators/State Parks

DATE: January 31, 2006 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HE	**Pre-meeting**
2.			EP	
3.			JU	
4.			GA	
5.				
6.				

I. Summary:

The bill encourages each state park to have on the premises at all times a functioning automated external defibrillator (AED). The bill requires state parks that have an AED to ensure that employees and volunteers are properly trained in the use of the AED pursuant to s. 401.2915, F.S. The location of the AED must be registered with the local emergency medical services medical director. Employees and volunteers who use an AED shall be covered by the immunity granted under the Good Samaritan Act and the Cardiac Arrest Survival Act. The Division of Recreation and Parks (division), under the Department of Environmental Protection (DEP) is authorized to adopt rules to implement the bill.

The bill provides for a one-time appropriation during the 2006-07 fiscal year in the sum of $92,000 from the General Revenue Fund to the division for the purpose of implementing this act and for purchasing AEDs.

This bill creates s. 258.0165, F.S.

II. Present Situation:

State Parks

According to DEP, the state of Florida had 1.9 million overnight campers visit state parks last year. Of the 54 camping parks, 13 had attendance greater than 200,000 last year. The total visitors to all state parks for the 2003-04 fiscal year was over 19 million. The number of visitors in Florida state parks over the age of 45 for the same time period was over 4 million, or 21 percent of all the visitors.

Sudden Cardiac Arrest

In 2003, the death rate from cardiovascular disease among Floridians age 45-85 was 577 per 1,000 deaths. The American Heart Association (AHA) provides the following description of cardiac arrest:

> "Cardiac arrest is the sudden, abrupt loss of heart function. The victim may or may not have diagnosed heart disease...Sudden death (also called sudden cardiac death) occurs within minutes after symptoms appear."[1]

Sudden cardiac arrest occurs on average at about 60 years of age. Each year, more than 350,000 Americans die from sudden cardiac arrest.

Time is of the essence in responding to cardiac arrest because brain death begins in just 4 to 6 minutes. Cardiac arrest can be reversed if it is treated within a few minutes with an electric shock to the heart to restore a normal heartbeat—a procedure known as *defibrillation*. According to AHA, a victim's chances of survival are reduced by 7 to 10 percent with every minute that passes without defibrillation, and few attempts at resuscitation succeed after 10 minutes have elapsed. According to AHA, with early defibrillation of a person in cardiac arrest, the person's possibility of survival jumps to more than 50 percent.

Automated External Defibrillators

An AED is an electronic device that can shock a person's heart back into rhythm when he or she is having a cardiac arrest. An AED determines the patient's heart rhythm to determine if a shock should be provided, and if needed, adjusts the level of energy to deliver an appropriate shock to the patient's heart when a rescuer pushes a button. The shock stops the abnormal rhythm and allows a normal pumping action to resume. AEDs are easy to use, compact, battery operated, lightweight and durable.

Public access to AEDs has increased survival rates by up to 50 percent for those suffering a sudden cardiac arrest. In Florida each month, approximately 2 to 3 people are saved with an AED by a trained lay person. Many states have enacted defibrillator laws or adopted regulations regarding their use.[2]

Training in the Use of AEDs

Section 401.2915, F.S., provides the minimum training requirements for an individual who intends to use an AED in cases of cardiac arrest, as follows:

- A person must obtain appropriate training, to include completion of a course in cardiopulmonary resuscitation or successful completion of a basic first aid course that

[1] See definition of "cardiac arrest" at <http://www.americanheart.org/presenter.jhtml?identifier=4481.>.

[2] Peter Scalco, Department of Environmental Protection, <http://www.dep.state.fl>, with additional information provided by the American Red Cross <http://www.redcross.org>.

includes cardiopulmonary resuscitation training, and demonstrated proficiency in the use of an AED;
- A person or entity in possession of an AED is encouraged to register with the local emergency medical services medical director the existence and location of the AED; and
- A person who uses an AED is required to activate the emergency medical services system as soon as possible upon use of the AED.

The section does not provide statutory definitions or minimum capabilities for such a device to be deemed an AED.

Immunity Under the Cardiac Arrest Survival Act

Section 768.1325, F.S., the Cardiac Arrest Survival Act, provides immunity from liability for a person who uses or attempts to use an AED in a perceived medical emergency. The immunity provided under s. 768.1325, F.S., does not apply to any harm that was due to the failure of the acquirer of the device to:

- Notify the local emergency medical services medical director of the most recent placement of the AED within a reasonable period of time after the AED is placed;
- Properly maintain and test the AED; or
- Provide appropriate training in the use of the AED to an employee or agent of the acquirer when the employee or agent was the person who used the AED on the victim, except such requirement of training does not apply if: the employee or agent was not an employee or agent who would have been reasonably expected to use the AED; or the period of time elapsing between the engagement of the person as an employee or agent and the occurrence of the harm, or between the acquisition of the AED and the occurrence of the harm in any case in which the AED was acquired after engagement of the employee or agent, was not a reasonably sufficient period in which to provide the training.

The immunity under s. 768.1325, F.S., does not apply to a person if:

- The harm involved was caused by that person's willful or criminal misconduct, gross negligence, reckless disregard or misconduct, or a conscious, flagrant indifference to the rights or safety of the victim who was harmed;
- The person is a licensed or certified health professional who used the AED while acting within the scope of the license or certification of the health professional and within the scope of the employment or agency of the professional;
- The person is a hospital, clinic, or other entity whose primary purpose is providing health care directly to patients, and the harm was caused by an employee or agent of the entity who used the device while acting within the scope of the employment or agency of the employee or agent;
- The person is an acquirer of the AED who leased the device to a health care entity, or who otherwise provided the AED to such entity for compensation without selling the device to the entity, and the harm was caused by an employee or agent of the entity who

used the AED while acting within the scope of the employment or agency of the employee or agent; or
- The person is the manufacturer of the AED.

Immunity under the Good Samaritan Act

Section 768.13, F.S., the "Good Samaritan Act," provides immunity from civil liability to:

- Any persons, including those licensed to practice medicine, who gratuitously and in good faith render emergency care or treatment either in direct response to emergency situations related to and arising out of a public health emergency declared pursuant to s. 381.00315, F.S., or a state of emergency which has been declared pursuant to s. 252.36, F.S., or at the scene of an emergency outside of a hospital, doctor's office, or other place having proper medical equipment. The immunity applies if the person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.

- Any health care provider, including a licensed hospital providing emergency services pursuant to federal or state law. The immunity applies to damages as a result of any act or omission of providing medical care or treatment, including diagnosis, which occurs prior to the time that the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient, unless surgery is required as a result of the emergency, in which case the immunity applies to any act or omission of providing medical care or treatment which occurs prior to the stabilization of the patient following surgery, or which is related to the original medical emergency. The act does not extend immunity from liability to acts of medical care or treatment under circumstances demonstrating a reckless disregard for the consequences so as to affect the life or health of another.

- Any health care practitioner who is in a hospital attending to a patient of his or her practice or for business or personal reasons unrelated to direct patient care, and who voluntarily responds to provide care or treatment to a patient with whom at that time the practitioner does not have a then-existing health care patient-practitioner relationship, and when such care or treatment is necessitated by a sudden or unexpected situation or by an occurrence that demands immediate medical attention, unless that care or treatment is proven to amount to conduct that is willful and wanton and would likely result in injury so as to affect the life or health of another. The immunity extended to health care practitioners does not apply to any act or omission of providing medical care or treatment unrelated to the original situation that demanded immediate medical attention.

III. Effect of Proposed Changes:

The bill creates s. 258.0165, F.S., titled "Defibrillators in state parks" to:

- Encourage each state park to have a functioning AED on the premises at all times;
- Require state parks that provide AEDs to ensure that employees and volunteers are properly trained in accordance with s. 401.2915, F.S.;

- Require the location of an AED to be registered with a local emergency medical services medical director; and
- Provide that any use of an AED by employees and volunteers shall be covered under the Good Samaritan Act and the Cardiac Arrest Survival Act.

The bill authorizes the division to adopt rules to implement the bill. The bill appropriates a sum of $92,000 for the fiscal year 2006-07 from the General Revenue Fund to the division for the purpose of implementing the act and purchasing AEDs.

The effective date of the bill is July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will benefit the successful bidder on a contract to provide up to $92,000 worth of AEDs to state parks.

C. Government Sector Impact:

The bill appropriates a sum of $92,000 for the fiscal year 2006-07 from the General Revenue Fund to the division for the purpose of implementing the act and purchasing AEDs.

According to the Division of Emergency Medical Operations within the Department of Health, concerning bids for AEDs, it is estimated that each AED will cost between $800 and $1,700. These costs are for the AED only and do not include extra parts or maintenance. The appropriation should allow the division to purchase between 125 and

260 AEDs. The division will incur a recurring expense to replace AEDs when they no longer work, wear out, or become outdated because of advances in AED technology. Such expense is unknown due to the variables associated with each AED repair.

Division officials that fail to comply with the requirements of ss. 768.13 and 768.1325, F.S., may still be liable for the acts of employees and volunteers who use AEDs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Care Committee

BILL: SB 388

INTRODUCER: Senator Argenziano

SUBJECT: Assisted Care Communities

DATE: January 30, 2006 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Goltry	Whiddon	CF	**Fav/10 amendments**
2.	Bedford	Wilson	HE	**Pre-meeting**
3.				
4.				
5.				
6.				

Please see last section for Summary of Amendments

- [x] Technical amendments were recommended
- [ ] Amendments were recommended
- [ ] Significant amendments were recommended

I. Summary:

Senate Bill 388 transfers all sections of parts III (assisted living facilities), VII (adult family-care homes), and V (adult day care centers) of chapter 400, F.S., to newly created parts I, II, and III of chapter 429, F.S., entitled "Assisted Care Communities." Additionally, the bill makes multiple statutory revisions that are needed to accurately reflect the move of part III of chapter 400, F.S. Finally, the Division of Statutory Revision is directed to prepare a reviser's bill to make conforming changes to the Florida Statutes.

This bill transfers and renumbers sections 400.401, 400.402, 400.404, 400.407, 400.4071, 400.4075, 400.408, 400.411, 400.412, 400.414, 400.415, 400.417, 400.4174, 400.4176, 400.4177, 400.4178, 400.418, 400.419, 400.4195, 400.42, 400.421, 400.422, 400.423, 400.424, 400.4255, 400.4256, 400.426, 400.427, 400.4275, 400.428, 400.429, 400.4293, 400.4294, 400.4295, 400.4296, 400.4297, 400.4298, 400.431, 400.434, 400.435, 400.441, 400.442, 400.444, 400.4445, 400.447, 400.449, 400.451, 400.452, 400.453, 400.454, 400.616, 400.617, 400.618, 400.619, 400.6194, 400.6196, 400.621, 400.6211, 400.622, 400.625, 400.6255, 400.628, 400.629, 400.55, 400.551, 400.552, 400.553, 400.554, 400.555, 400.556, 400.5565, 400.557, 400.5571, 400.5572, 400.5575, 400.558, 400.559, 400.56, 400.562, 400.563, and 400.564 of the Florida Statutes.

In addition to renumbering the above sections, the bill amends the following sections 101.655, 189.428, 196.1975, 202.125, 205.1965, 212.031, 212.08, 296.02, 381.0035, 381.745, 393.063, 393.506, 394.455, 394.4574, 394.463, 400.0063, 400.0069, 400.0073, 400.0077, 400.0239, 400.119, 400.141, 400.142, 400.191, 400.215, 400.402, 400.404, 400.407, 400.4071, 400.408, 400.411, 400.412, 400.414, 400.415, 400.417, 400.4174, 400.4176, 400.4178, 400.418, 400.419, 400.42, 400.422, 400.424, 400.4255, 400.4256, 400.426, 400.427, 400.428, 400.429, 400.4293, 400.431, 400.441, 400.442, 400.444, 400.447, 400.452, 400.462, 400.464, 400.497, 400.556, 400.5572, 400.601, 400.618, 400.628, 400.93, 400.962, 400.980, 400.9905, 400.9935, 401.23, 402.164, 408.032, 408.033, 408.034, 408.07, 408.831, 409.212, 409.905, 409.906, 409.907, 409.912, 410.031, 410.034, 413.20, 415.1111, 430.601, 430.703, 435.03, 435.04, 440.13, 465.0235, 468.1685, 468.505, 477.025, 509.032, 509.241, 627.732, 651.011, 651.022, 651.023, 651.055, 651.095, 651.118, 765.1103, 765.205, 768.735, 893.13, 943.0585, and 943.059 of the Florida Statutes, to make conforming changes.

II. Present Situation:

Regulation of Health Care Facilities and Services

Chapter 408, F.S., "Health Care Administration" contains the general statutory provisions assigned to the Agency for Health Care Administration (AHCA or agency). The Agency as created in s. 20.42, F.S., is responsible for:

- Health facility licensure, inspection, and regulatory enforcement;
- Investigation of consumer complaints related to health care facilities and managed care plans;
- Implementation of the certificate-of-need program;
- Operation of the State Center for Health Statistics;
- Administration of the Medicaid program;
- Administration of the contracts with the Florida Healthy Kids Corporation;
- Certification of health maintenance organizations and prepaid health clinics as set forth in part III of chapter 641, F.S.; and
- Any other duties prescribed by statute or agreement.

The statutory provisions for the health care facilities and services requiring licensure by, or registration with, AHCA, are found in chapters 112, 383, 390, 394, 395, 400, 440, 483, and 765, F.S. The facilities and services include drug free workplace laboratories, birth centers, abortion clinics, crisis stabilization units, short term residential treatment units, residential treatment facilities, residential treatment centers for children and adolescents, hospitals, ambulatory surgical centers, mobile surgical facilities, private review agents, health care risk managers, nursing homes, assisted living facilities, home health agencies, nurse registries, companion services or homemaker services providers, adult day care centers, hospices, adult family-care homes, homes for special services, transitional living facilities, prescribed pediatric extended care centers, home medical equipment providers, intermediate care facilities for the developmentally disabled, health care services pools, health care clinics, clinical laboratories, multiphasic health testing centers, and organ and tissue procurement agencies.

These regulated health care facilities and services provide care in settings ranging from individuals' homes to institutions such as hospitals and nursing homes. The complexity of care provided ranges from companion and homemaker services in the home to trauma care and intensive care in hospitals. The duration of service ranges from short-term to long-term.

The Department of Elderly Affairs currently has rule-writing authority for assisted living facilities, adult family-care homes, adult day care centers, and hospices. The agency has rule-writing authority for the majority of other facilities and services it licenses including hospitals, nursing homes, home health agencies, and others.

Nursing Homes and Related Health Care Facilities

Chapter 400, F.S., is entitled "Nursing Homes and Related Health Care Facilities" and consists of 13 parts.

Part	Title
I	Long-Term Care Facilities: Ombudsman Program
II	Nursing Homes
III	Assisted Living Facilities
IV	Home Health Agencies
V	Adult Day Care Centers
VI	Hospices
VII	Adult Family-Care Home Act
VIII	Intermediate, Special Services, and Transitional Living Facilities
IX	Prescribed Pediatric Extended Care Centers
X	Home Medical Equipment Providers
XI	Intermediate Care Facilities for Developmentally Disabled Persons
XII	Health Care Services Pools
XIII	Health Care Clinic Act

Assisted Living Facilities

Assisted living facilities (ALFs) are residential care facilities that provide housing, meals, personal care, supervision, supportive services and assistance with or administration of medications to older persons and disabled adults who are unable to live independently. These facilities are licensed under ch. 400, part III, F.S., and are intended to be a less costly alternative to more restrictive, institutional settings for individuals who do not require 24-hour nursing supervision. They are regulated in a manner to encourage dignity, individuality, and choice for residents, while providing reasonable assurance of their safety and welfare.

In addition to a standard ALF license, there are three "specialty" ALF licenses: extended congregate care (ECC), limited nursing services (LNS), and limited mental health (LMH). An ALF holding an ECC license may provide additional nursing services and total assistance with personal care services. Residents living in ECC-licensed facilities may have higher impairment levels than those living in a standard ALF. Residents living in an ALF holding a LNS or LMH

license must meet the same residency criteria as a standard-licensed ALF, but require limited additional services.

Regardless of the facility's license status, residents living in ALFs cannot have conditions that require 24-hour nursing supervision. The only exception is for an existing resident who is receiving licensed hospice services while residing in the ALF.

Adult Family-Care Homes

An adult family-care home (AFCH) is a family-type living arrangement in a private home for individuals who need housing and supportive services but who do not need 24-hour nursing supervision. These homes are licensed in accordance with ch. 400, part VII, F.S., to provide room, board, and personal care on a 24-hour basis for up to five individuals, and are intended to be an alternative to more restrictive, institutional settings. The provider must own or rent and live in the home.

Adult Day Care Centers

Adult Day Care Centers (ADCC) are licensed under ch. 400, part V, F.S., to provide therapeutic programs of social and health services as well as activities for adults in a non-institutional setting. Participants may utilize a variety of services offered during any part of a day but less than a 24-hour period.

Division of Statutory Revision

The Division of Statutory Revision (Division) is a unit within the Office of Legislative Services (OLS), which is responsible for editing, compiling, indexing, and publishing the Florida Statutes under the continuous permanent statutory revision plan established under ss. 11.241-11.243, F.S. The powers, duties, and functions of OLS as they pertain to the statutory revision program are specified by these sections of statute.

The provisions of s. 11.242(1), F.S., charge the Division with conducting a systematic and continuing study of the statutes and laws of this state for the purpose of reducing their number and bulk, removing inconsistencies, redundancies, and unnecessary repetitions and otherwise improving their clarity and facilitating their correct and proper interpretation; and for the same purpose, to prepare and submit to the Legislature reviser's bills and bills for the amendment, consolidation, revision, repeal, or other alterations or changes in any general statute or laws or parts thereof of a general nature required as a result of legislation approved during the preceding session or sessions.

III. Effect of Proposed Changes:

Senate Bill 388 transfers all sections of parts III, VII, and V of ch. 400, F.S., to ch. 429, F.S. This bill entitles the chapter "Assisted Care Communities" and makes multiple statutory revisions that are needed to accurately reflect the move of parts III, VII, and V of ch. 400, F.S., to chapter 429, F.S. Chapter 429, F.S., is organized into parts I, II, and III, as follows:

Chapter 400, F.S., part	Title	Transferred to chapter 429, F.S., part
III	Assisted Living Facilities	I
VII	Adult Family-Care Home Act	II
V	Adult Day Care Centers	III

Section 1. Creates ch. 429, F.S., entitled "Assisted Care Communities."

Section 2. Renumbers ss. 400.401 - 400.454, F.S., as ss. 429.01 - 429.54, F.S., creating part I of ch. 429, F.S., "Assisted Living Facilities."

Section 3. Renumbers ss. 400.616 - 400.629, F.S., as ss. 429.60 - 429.85, F.S., to create part II of ch. 429, F.S., "Adult Family-Care Homes."

Section 4. Renumbers ss. 400.55 - 400.564, F.S., as ss. 429.90 - 429.933, F.S., to create part III of ch. 429, F.S., "Adult Day Care Centers."

Sections 5 – 113. Amend numerous sections of statute to make the conforming changes needed to reflect the move of parts III, VII, and V of ch. 400, F.S., to newly created ch. 429, F.S.

Section 114. Directs the Division of Statutory Revision to prepare a reviser's bill to introduce at the subsequent legislative session to make conforming changes to the Florida Statutes.

The requirements specified in the sections of part III of ch. 400, F.S., are interconnected with other sections contained in that chapter. The provisions of this legislation make the conforming changes that are needed to accurately reflect the move of ch. 400, part III, F.S., to ch. 429, part I, F.S.

Section 115. Provides an effective date of July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The agency reports that there should be no fiscal impact from implementing the provisions of this bill.

VI. Technical Deficiencies:

There is a typographical error on page 2, line 15, which refers to creating ch. 439, F.S. The remainder of the bill refers to ch. 429, F.S.

On page 3, line 9, a reference to s. 429.87, F.S., needs to be added to reflect the appropriate number of sections of ch. 400, F.S., that are transferred to ch. 429, F.S.

VII. Related Issues:

The addition of the reference to ch. 429 in s. 400.142, F.S., (section 27 of the bill) appears to be inappropriate. Section 27 of the bill should be removed.

Amendment barcode 682972 by the Children and Families Committee is incorrect. Section 13 of the bill should remain as filed.

VIII. Summary of Amendments:

Barcode 113316 by Children and Families:
Corrects a typographical error.

Barcode 915514 by Children and Families:
Inserts a reference to a section renumbered by the bill.

Barcode 682972 by Children and Families:
Corrects a cross reference to Parts I and III of chapter 429.

Barcode 423626 by Children and Families:
Corrects a cross reference to chapter 429.

Barcode 052534 by Children and Families:
Corrects a cross reference to part I and part III of chapter 429.

Barcode 834534 by Children and Families:
Deletes an incorrect cross reference to part I of chapter 429.

Barcode 570724 by Children and Families:
Deletes an incorrect cross reference to chapter 429.
WITH DIRECTORY CLAUSE AMENDMENT

Barcode 044226 Children and Families:
Deletes a section of the bill that incorrectly cross references chapter 429.
WITH TITLE AMENDMENT

Barcode 874786 Children and Families:
Deletes a section of the bill that incorrectly cross references chapter 429.
WITH TITLE AMENDMENT

Barcode 361290 by Children and Families:
Corrects a cross reference to part I of chapter 429.

CHAMBER ACTION

Senate House

HEALTH CARE COMMITTEE

DATE: 2/2/06

TIME: 11:30 a.m.

The Committee on Health Care (Peaden) recommended the following **amendment to amendment** (682972):

Senate Amendment

On page 1, lines 17-19, delete those lines

and insert:

chapter 395, ~~and~~ parts II, III, and IV~~,--and-VI~~ of chapter 400, and part I of chapter 429 to complete, biennially, a

CHAMBER ACTION

Senate House

HEALTH CARE COMMITTEE
DATE: 2/2/06
TIME: 11:30a.m.

The Committee on Health Care (Peaden) recommended the following amendment:

Senate Amendment (with title amendment)

On page 18, lines 9-19, delete those lines

and:

(Redesignate subsequent sections.)

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

On page 1, line 15, delete "400.142,"

CHAMBER ACTION

Senate House

TRAVELING AMENDMENT

The Committee on Children and Families (Campbell) recommended the following amendment:

Senate Amendment

On page 2, line 15, delete 439

and insert: 429

CHAMBER ACTION

Senate House

TRAVELING AMENDMENT

The Committee on Children and Families (Campbell) recommended the following amendment:

Senate Amendment

On page 3, line 9, delete and 429.85,

and insert: 429.85, and 429.87,

CHAMBER ACTION

Senate House

TRAVELING AMENDMENT

The Committee on Children and Families (Campbell) recommended the following amendment:

Senate Amendment

On page 8, lines 30 and 31, delete those lines

and insert: chapter 359, ~~and~~ parts II and~~,~~ III~~,~~ ~~IV,~~ ~~and VI~~ of chapter 400, and parts I and III of chapter 429 to complete, biennially, a

CHAMBER ACTION

Senate House

TRAVELING AMENDMENT

The Committee on Children and Families (Campbell) recommended the following amendment:

Senate Amendment

On page 16, line 8, delete the words "s. 429.02"

and insert: chapter 429

CHAMBER ACTION

Senate House

TRAVELING AMENDMENT

The Committee on Children and Families (Campbell) recommended the following amendment:

Senate Amendment

On page 17, line 9, after the word "or"

insert: part I or part III of

CHAMBER ACTION

Senate House

TRAVELING AMENDMENT

The Committee on Children and Families (Campbell) recommended the following amendment:

Senate Amendment

On page 52, line 14,

on page 53, line 9,

on page 127, line 23, and

on page 128, lines 12 and 22, delete the words "part I of"

CHAMBER ACTION

Senate House

TRAVELING AMENDMENT

The Committee on Children and Families (Campbell) recommended the following amendment:

Senate Amendment (with directory amendment)

On page 132, lines 18-20, delete those lines.

==== D I R E C T O R Y C L A U S E A M E N D M E N T ====

And the directory clause is amended as follows:

On page 132, lines 14 and 15, delete those lines

and insert:

Section 70. Paragraph (c) of subsection (10) of section 400.962, Florida Statutes, is

CHAMBER ACTION

Senate House

TRAVELING AMENDMENT

The Committee on Children and Families (Campbell) recommended the following amendment:

Senate Amendment (with title amendment)

On page 135, lines 29-31, and

on page 136, lines 1-3, delete those lines and redesignate subsequent sections.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

On page 1, line 30, delete the word "400.9935,"

CHAMBER ACTION

Senate House

TRAVELING AMENDMENT

The Committee on Children and Families (Campbell) recommended the following amendment:

Senate Amendment (with title amendment)

On page 150, lines 1-7, delete those lines and redesignate subsequent sections.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

On page 2, line 2, delete the word "413.20,"

CHAMBER ACTION

Senate House

TRAVELING AMENDMENT

The Committee on Children and Families (Campbell) recommended the following amendment:

Senate Amendment

On page 154, line 9,

on page 160, lines 6, 17, and 23, and

on page 161, lines 1 through 2, 6, and 15, delete the words "chapter 429"

and insert: part I of chapter 429

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Care Committee

BILL: SB 698

INTRODUCER: Domestic Security Committee

SUBJECT: Medical Facilities Information/DOH/OGSR

DATE: January 30, 2006 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pardue	Skelton	DS	**Favorable**
2.	Munroe BJM	Wilson JW	HE	**Pre-meeting**
3.			GO	
4.			RC	
5.				
6.				

I. Summary:

This bill reenacts the public records exemption provided for information concerning medical facilities and laboratories which is maintained by the Department of Health (DOH) as part of the state's plan to defend against terrorism. The bill provides for the exemption of any information identifying or describing the name, location, pharmaceutical cache, contents, capacity, equipment, physical features, or capabilities of individual medical facilities, storage facilities, or laboratories established, maintained, or regulated by DOH. The bill deletes the provision that repeals the exemption.

This bill reenacts and amends s. 381.95, F.S.

II. Present Situation:

Public Records

Florida has a long history of providing public access to the records and meetings of governmental and other public entities. The Florida Legislature enacted the first law affording access to public records in 1909. In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to public records to a constitutional level.

The Public Records Law, ch. 119, F.S., specifies the conditions under which public access must be provided to governmental records. While the State Constitution provides that records are to be open to the public, it also provides that the Legislature may create exemptions to these requirements by general law if a public need exists and certain procedural requirements are met. Article I, s. 24, of the Florida Constitution, governs the creation and expansion of exemptions to

provide, in effect, that any legislation that creates a new exemption or that substantially amends an existing exemption must also contain a statement of the public necessity that justifies the exemption. Article I, s. 24, of the Florida Constitution, provides that any bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions.

Open Government Sunset Review Act

The Open Government Sunset Review Act provides for the repeal and prior review of any public records or meetings exemptions that are created or substantially amended in 1996 and subsequently.[1] The chapter defines the term "substantial amendment" for purposes of triggering a repeal and prior review of an exemption to include an amendment that expands the scope of the exemption to include more records or information or to include meetings as well as records. The law clarifies that an exemption is not substantially amended if an amendment limits or narrows the scope of an existing exemption. The law was amended by ch. 2005-251, Laws of Florida, to modify the criteria under the Open Government Sunset Review Act so that consideration will be given to reducing the number of exemptions by creating a uniform exemption during the review of an exemption subject to sunset.

Under the Open Government Sunset Review Act, an exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, the administration of which would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

Section 119.15(6)(a), F.S., requires, as part of the review process, the consideration of the following questions:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?

[1] See section 119.15, F.S.

- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

Further, the exemption must be no broader than is necessary to meet the public purpose it serves. In addition, the Legislature must find that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption.

Under s. 119.15(8), F.S., notwithstanding s. 768.28, F.S., or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of an exemption under the section. The failure of the Legislature to comply strictly with the section does not invalidate an otherwise valid reenactment. Further, one session of the Legislature may not bind a future Legislature. As a result, a new session of the Legislature could maintain an exemption that does not meet the standards set forth in the Open Government Sunset Review Act.

2001 Legislative Findings

In creating s. 381.95, F.S., the Legislature found that there was a public necessity to exempt medical facility information because information identifying or describing the name, location, pharmaceutical cache, contents, capacity, equipment, physical features, or capabilities of individual medical facilities, storage facilities, or laboratories established, maintained or regulated by DOH as part of the state's plan to defend its residents against future acts of terrorism is information that could be used by terrorists in planning acts of terrorism.[2] The findings further stated that if terrorists were able to discover this information used to defend the State of Florida and its residents and visitors against an act of terrorism, the terrorists could use it to craft a terrorist act to which the State of Florida may not be as well prepared to respond. This information could be used to increase the number of people injured or killed in a terrorist act. Although some skill would be required to use such information to further an act of terrorism, ample evidence of the capabilities of terrorists to conduct complicated acts of terrorism exist.

Senate Interim Project Report 2006-212

The Senate Domestic Security Committee, in its review of Senate Interim Project Report 2006-212, accepted the recommendation that the exemption provided for medical facilities information continues to be sufficiently compelling to override the strong public policy of open government. International terrorists continue to demonstrate the ability to plan and carry out sophisticated acts of terrorism. Their capability appears to be no less today than at the time of the Legislature's original findings in 2001.

III. Effect of Proposed Changes:

The bill reenacts the public records exemption provided for information concerning medical facilities and laboratories, which is maintained by DOH as part of the state's plan to defend against terrorism. The bill provides for the exemption of any information identifying or describing the name, location, pharmaceutical cache, contents, capacity, equipment, physical

[2] See ch. 2001-363, L.O.F.

features, or capabilities of individual medical facilities, storage facilities, or laboratories established, maintained, or regulated by DOH.

The bill continues the current statutory provision that the Governor's certification of the sufficiency of medical facility and related information covered by the exemption is a public record. Further, the bill continues to allow custodial agency disclosure of exempt information to another state or federal agency in order to prevent, detect, guard against, respond to, investigate, or manage the consequences of any attempted or actual act of terrorism or to prosecute those responsible for such attempts or acts. Such information retains its exempt status while in the custody of the receiving agency.

This bill reenacts and saves s. 381.95, F.S., from repeal under the Open Government Sunset Act and amends the section by deleting the provision that repeals the exemption.

This bill provides for an effective date of October 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

In accordance with a review pursuant to the Open Government Sunset Review Act, this bill amends s. 381.95, F.S., and preserves the public records exemption in that section. The bill does not expand the exemption. The bill complies with the requirements of Art. I, s. 24(a) of the State Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Domestic Security Committee

BILL: SB 700

INTRODUCER: Domestic Security Committee

SUBJECT: Emergency Management Plans/Hospitals/OGSR

DATE: January 30, 2006 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pardue	Skelton	DS	**Favorable**
2.	Bedford PB	Wilson GW	HE	**Pre-meeting**
3.			GO	
4.			RC	
5.				
6.				

I. Summary:

This bill reenacts the public records and the public meetings exemption provisions for portions of hospitals' comprehensive emergency management plans (CEMP). The exemptions apply to those portions of a CEMP which address the response of a public or private hospital to an act of terrorism as defined by s. 775.30, F.S., and which are filed with or are in the possession of the Agency for Health Care Administration (AHCA), a state or local law enforcement agency, a county or municipal emergency management agency, the Executive Office of the Governor (EOG), the Department of Health (DOH), or the Department of Community Affairs (DCA), or which are in the custody of a public hospital. The exemptions also apply to portions of public meetings which would reveal exempt information contained in a CEMP. The bill deletes the provisions that repeal the exemptions.

This bill reenacts and amends s. 395.1056(1), (2), and (3), F.S.

II. Present Situation:

Public Records

Florida has a long history of providing public access to the records and meetings of governmental and other public entities. The Florida Legislature enacted the first law affording access to public records in 1909. In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to public records to a constitutional level.

The Public Records Law, ch. 119, F.S., specifies the conditions under which public access must be provided to governmental records. Section 286.011, F.S., the Public Meetings Law, specifies

the requirements for meetings of public bodies to be open to the public. While the State Constitution provides that records and meetings are to be open to the public, it also provides that the Legislature may create exemptions to these requirements by general law if a public need exists and certain procedural requirements are met. Article I, s. 24, of the Florida Constitution, governs the creation and expansion of exemptions to provide, in effect, that any legislation that creates a new exemption or that substantially amends an existing exemption must also contain a statement of the public necessity that justifies the exemption. Article I, s. 24, of the Florida Constitution, provides that any bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions.

Open Government Sunset Review Act

The Open Government Sunset Review Act provides for the repeal and prior review of any public records or meetings exemptions that are created or substantially amended in 1996 and subsequently.[1] The chapter defines the term "substantial amendment" for purposes of triggering a repeal and prior review of an exemption to include an amendment that expands the scope of the exemption to include more records or information or to include meetings as well as records. The law clarifies that an exemption is not substantially amended if an amendment limits or narrows the scope of an existing exemption. The law was amended by ch. 2005-251, Laws of Florida, to modify the criteria under the Open Government Sunset Review Act so that consideration will be given to reducing the number of exemptions by creating a uniform exemption during the review of an exemption subject to sunset.

Under the Open Government Sunset Review Act, an exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, the administration of which would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

Section 119.15(6)(a), F.S., requires, as part of the review process, the consideration of the following questions:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?

[1] See section 119.15, F.S.

- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

Further, the exemption must be no broader than is necessary to meet the public purpose it serves. In addition, the Legislature must find that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption.

Under s. 119.15(8), F.S., notwithstanding s. 768.28, F.S., or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of an exemption under the section. The failure of the Legislature to comply strictly with the section does not invalidate an otherwise valid reenactment. Further, one session of the Legislature may not bind a future Legislature. As a result, a new session of the Legislature could maintain an exemption that does not meet the standards set forth in the Open Government Sunset Review Act of 1995.

2001 Legislative Findings

In creating s. 395.1056, F.S., the Legislature found that there is a public necessity to exempt plan components of a hospital's response to terrorism because those portions of a CEMP which address the response of a public or private hospital to an act of terrorism are vital plan components that affect the health and safety of the public.[2] The findings further stated that if security systems or plans, vulnerability analyses, emergency evacuation transportation, sheltering arrangements, post-disaster activities (including provisions for emergency power), communications, food, and water, post-disaster transportation, supplies (including caches), staffing, emergency equipment, individual identification of residents, transfer of records, and methods of responding to family inquiries were made publicly available for inspection or copying, they could be used to hamper or disable the response of a hospital to a terrorist attack. If a hospital's response to an act of terrorism were hampered or disabled, an increase in the number of Floridians subjected to fatal injury would occur.

While some skill would be required to use knowledge of plan components to disable a hospital's response to an act of terrorism, there is ample existing evidence of the capabilities of terrorists to plot, plan, and coordinate complicated acts of terror.

Senate Interim Project Report 2006-213

The Senate Domestic Security Committee, in its review of Senate Interim Project Report 2006-213, accepted the recommendation that the exemptions provided for portions of hospital CEMPs continue to be sufficiently compelling to override the strong public policy of open government. International terrorists continue to demonstrate the ability to plan and carry out

[2] See chapter 2001-362, L.O.F.

sophisticated acts of terrorism. Their capability appears to be no less today than at the time of the Legislature's original findings in 2001.

III. Effect of Proposed Changes:

This bill reenacts the public records and public meetings exemptions provided for portions of hospitals' CEMPs. Section 395.1056, F.S., exempts from public disclosure, those portions of a CEMP which address the response of a public or private hospital to an act of terrorism as defined by s. 775.30, F.S., and which are filed with or are in the possession of AHCA, a state or local law enforcement agency, a county or municipal emergency management agency, EOG, DOH, or DCA. The section also gives a public access exemption to those portions of a CEMP related to terrorism response that are in the custody of a public hospital.

The public access exemption extends to portions of a hospital's CEMP including those portions addressing security systems or plans; vulnerability analyses; emergency evacuation transportation; sheltering arrangements; post-disaster activities including provisions for emergency power, communications, food and water; post-disaster transportation; supplies, including drug caches; staffing; emergency equipment; and individual identification of residents, transfer of records, and methods of responding to family inquiries.

Any portion of a public meeting which would reveal information contained in a CEMP which addresses the response of a hospital to an act of terrorism is also exempted.

This bill reenacts and saves s. 395.1056(1), (2), and (3) from repeal under the Open Government Sunset Review Act and amends the section by deleting the provisions that repeal the exemptions.

This bill provides for an effective date of October 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

In accordance with a review pursuant to the Open Government Sunset Review Act, this bill amends s. 395.1056, F.S., and preserves the public meetings and records exemptions in that section. The bill does not expand the exemptions. The bill complies with the requirements of Art. I, s. 24(a) and (b) of the State Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Care Committee

BILL: SB 874

INTRODUCER: Senator Miller

SUBJECT: Medicaid Services/Air Ambulance Rates

DATE: February 6, 2006 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Garner MS	Wilson JW	HE	**Pre-meeting**
2.			HA	
3.				
4.				
5.				
6.				

I. Summary:

This bill requires the Medicaid program to reimburse for air ambulance transportation services at the same rates as current Medicare reimbursement for the same services.

This bill amends s. 409.905, Florida Statutes.

II. Present Situation:

Air Ambulance Transportation

An air ambulance is a rotary (a helicopter) or a fixed-wing aircraft used for rapidly transporting individuals with life-threatening injuries or conditions to the nearest medical/trauma center by critical care personnel. These aircraft often have a built-in stretcher system and are fully equipped with advanced life support medical equipment and medical personnel to assist in the transport of an ill person from one location to another.

Advanced life support medical equipment found onboard an air ambulance may consist of, but is not limited to, cardiac monitors, defibrillators, IV pumps, infusion pumps, IV solutions, medical oxygen, oxygen supplies with all necessary regulators and gauges to deliver oxygen, intubations equipment, respirator/ventilator, Federal Aviation Administration-approved stretcher, oropharyngeal airways, hand operated bag-valve mask resuscitators, portable suction units, pulse oximeters, and blood pressure cuffs.

Medical personnel that assist in the transport of patients usually include a registered nurse and/or an advanced life support paramedic. When a patient needs to be transported with a respirator or ventilator, a respiratory therapist may be required to treat the patient, along with a nurse. In some

air ambulance services, neonatal and pediatric nurses are used to take care of infants in incubators. With certain severe medical conditions, specialized physicians (such as Cardiologists, Neurologists, Emergency Physicians, Orthopedists, etc.) may accompany a patient during transport.

The cost of air medical transport varies greatly depending on the region of the country, distance flown, and other factors. According to the 2000 Annual Transport Statistics & Fees Survey (*Air Med*, July/August 2002), the average cost can range from $2591.72 to $6152.22 per flight.

Medicare Reimbursement for Air Ambulance Services

Section 4531(b)(2) of the Balanced Budget Act (BBA) of 1997 added a new section 1834(1) to the Social Security Act which mandated the implementation of a national fee schedule for ambulance services furnished as a benefit under Medicare. The fee schedule applies to all ambulance services, including volunteer, municipal, private, independent, and institutional providers, i.e., hospitals, critical access hospitals (except when it is the only ambulance service within 35 miles), and skilled nursing facilities.

Section 1834(l) also requires mandatory assignment for all ambulance services. Ambulance providers and suppliers must accept the Medicare allowed charge as payment in full and may not bill or collect from the beneficiary any amount other than any unmet Part B deductible and the Part B coinsurance amounts.

Medicare covers part, or all, of certain types of air medical transports. In general, those flights must be considered medically necessary and must be to the nearest appropriate facility. Medicare can refuse to pay for flights if the reasons behind the flight do not meet its set of guidelines.

The Medicare air ambulance rate is a combination of a base rate called the Relative Value Unit (RVU) and a loaded mileage rate.[1] In general, RVUs set a numeric value for ambulance services relative to the value of a base level ambulance service. However, for air ambulance services the RVU is actually two set amounts based on whether the air ambulance is a fixed-wing aircraft or a rotary aircraft. In 2005, the air ambulance RVU base rate in Florida for fixed-wing aircraft was $2,467.95 and $2,869.35 for rotary aircraft.

The RVU amount is then either discounted or increased based on the geographic area of the state where the patient is picked up and whether that zip code is labeled urban or rural by the Medicare program. In Florida, there are three different geographic areas and each has an urban and rural rate adjustment (the rural rate is set 1.5 greater than the urban rate). The following table includes the final RVU base rates for the three geographic areas once all these factors are incorporated.

[1] "Loaded mileage" is mileage accrued only while the patient is physically onboard the aircraft.

	Locale 1	Locale 2	Locale 3
Fixed-wing (urban)	$ 2,393.91	$ 2,471.65	$ 2,528.41
Fixed-wing (rural)	3,590.87	3,707.48	3,797.62
Rotary (urban)	2,783.27	2,873.65	2,939.65
Rotary (rural)	4,174.90	4,310.48	4,409.47

The appropriately adjusted RVU is then coupled with the loaded mileage reimbursement for any particular transport to reach the total Medicare reimbursement.

The Centers for Medicare and Medicaid Services (CMS) updates the national database of zip codes biennially to include any new zip codes and to designate which counties are rural or urban for reimbursement purposes. The CMS also adjusts the RVU base rate and mileage reimbursement rate on an annual basis.

Medicaid Reimbursement for Air Ambulance Services

The Florida Medicaid program reimburses for transportation services provided by Medicaid-participating ground and air ambulance companies, wheelchair and stretcher van providers, taxicab companies, multi-passenger van and bus lines, and public and private organizations.

To be reimbursed by Medicaid, transportation must be for the purpose of transporting the recipient to or from a Medicaid-covered service to receive medically-necessary care. When necessary, Medicaid may reimburse transportation of an escort for the recipient, such as a parent or guardian. Transportation services are available only to eligible recipients who cannot obtain transportation on their own through any available means such as family, friends or community resources. All transportation must be the most cost-effective and most appropriate method of transportation available to each transportation-eligible Medicaid recipient.

In order to provide air ambulance services in Medicaid, air ambulances must be licensed by the Department of Health, Office of Emergency Medical Services, in accordance with s. 401.251, F.S., and the Florida Administrative Code. Medicaid will only reimburse for air ambulance services when the recipient's condition falls within one or more of the condition codes listed on the Medicare Ambulance Medical Condition List on the date of service and the transport is:

- A critical emergency situation in which loss of life, limb, or essential body or organ function is jeopardized; and
- A medical situation in which time constraints make the use of land ambulance impractical.

Medicaid reimburses an all-inclusive fee for air ambulance services within the state plus a fee for loaded mileage. The reimbursement per mile for air ambulance transportation is $4.00. The average rate of Medicaid reimbursement to health care providers for air-ambulance transportation and the total number of Medicaid air-ambulance transports for Fiscal Year 2004-05 in Florida are included in the table below.

Service	# of Claims	Avg. $ Per Claim	Cost
Air Ambulance Fixed Wing	246	$ 980.11	$ 241,107.06
Mileage Fixed Wing	279	582.03	162,386.37
Air Ambulance Rotary Wing	2,358	992.87	2,341,187.46
Mileage Rotary Wing	2,179	279.14	608,246.06
TOTAL			$ 3,352,926.95

In circumstances where the all-inclusive fee is not applied, negotiated rates can be approved by the local Agency for Health Care Administration area office that has jurisdiction over the county of origin for the transport. Providers must submit sufficient documentation to the area Medicaid office regarding the specific circumstance that necessitates a negotiated rate. Negotiated rates are based on:

- Out-of-county transports greater than 30 miles;
- Specialized medical interventions and treatment;
- Specially trained medical personnel required en route;
- Usage of advanced technologies and equipment en route;
- Instances where the recipient's condition is not listed on the Medicare Ambulance Medical Condition List in effect at the time of service; or
- Other special circumstances.

If the area Medicaid office denies the authorization request for a negotiated rate, the area Medicaid office must provide to the ambulance provider a written statement summarizing the reason for the denial.

III. Effect of Proposed Changes:

Section 1. Amends s. 409.905(12), F.S., to require the Medicaid program to reimburse for air ambulance transportation services at the same rates as current Medicare reimbursement for the same service.

Section 2. Provides an effective date upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private air ambulance services would receive higher Medicaid reimbursements, which would offset their operating costs.

C. Government Sector Impact:

[The Agency for Health Care Administration had not provided a fiscal analysis of this bill at the time of publication.]

Senate staff calculated a fiscal analysis by applying the mid-range Medicare base reimbursement to the actual Medicaid claims for air ambulance services in FY 2004-05. Based on this calculation, the additional Medicaid expenditures for air ambulance services in FY 2004-05 would have been between $3.9 million and $7.5 million, for a total cost of between $7.2 million and $10.8 million. Actual expenditures for that fiscal year were approximately $3.4 million.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires the Medicaid reimbursement for air transportation to be paid at the same rate as current Medicare reimbursement for the same services. This raises two possible issues.

First, there are several different base reimbursement rates for Medicare air transportation services. It is not clear, whether the Medicaid rates would need to vary the same way the Medicare rates vary, or if an average of the Medicare rates could be used to set the base Medicaid rate.

Second, the Medicare rates and how they are applied in urban and rural areas change every six months. It is unclear whether the bill's language would require Medicaid rates to change in the same manner.

VIII. Summary of Amendments:

None.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Care Committee

BILL: SB 972

INTRODUCER: Senator Rich

SUBJECT: Florida KidCare Program/Eligibility

DATE: February 6, 2006 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Garner MS	Wilson	HE	**Pre-meeting**
2.			HA	
3.			WM	
4.				
5.				
6.				

I. Summary:

This bill modifies the eligibility criteria for the Florida KidCare Program. The bill allows a child whose family income exceeds 200 percent of the federal poverty level to participate in the Medikids program, or if the child is ineligible for the Medikids program due to age, to participate in the Florida Healthy Kids program, if the family pays the entire cost of the premium, including administrative costs, and such enrollees do not exceed 10 percent of total enrollees in either the Medikids program or the Florida Healthy Kids program.

This bill amends s. 409.814, Florida Statutes, and creates an unnumbered section of law.

II. Present Situation:

State Children's Health Insurance Program

The State Children's Health Insurance Program (SCHIP), enacted as part of the Balanced Budget Act of 1997, created Title XXI of the Social Security Act, which provides insurance to uninsured children in low-income families either through a Medicaid expansion, a separate children's health program, or a combination of both. The State Children's Health Insurance Program was designed as a federal/state partnership, similar to Medicaid, with the goal of expanding health insurance to children whose families earn too much money to be eligible for Medicaid, but not enough money to purchase private insurance. The State Children's Health Insurance Program is the single largest expansion of health insurance coverage for children since the initiation of Medicaid in the mid-1960s.

The Florida KidCare Program

The Legislature created Florida's KidCare program during the 1998 Legislative Session, in response to passage of Title XXI of the Social Security Act, to make affordable health insurance available to previously uninsured, low-income children. The program is primarily targeted to uninsured children under age 19 whose family income is at or below 200 percent of the federal poverty level ($38,700 for a family of four in 2005). The KidCare program is designed to maximize coverage for eligible children and federal funding participation for Florida, while avoiding the creation of an additional entitlement program under Medicaid. The KidCare program is outlined in ss. 409.810 through 409.821, F.S.

KidCare is an "umbrella" program that currently includes the following four components: Medicaid for children; Medikids; the Florida Healthy Kids program; and the Children's Medical Services (CMS) Network, which includes a behavioral health component.

Enrollment was initiated on October 1, 1998, and 1,465,678 children are enrolled in the various components of the KidCare Program as of January 2006. Of this total, 186,080 children are Title XXI eligible, 26,361 children are non-Title XXI eligible, and 1,253,237 children are eligible under the Medicaid Title XIX program.

KidCare Administration

The Florida Healthy Kids program component of KidCare is administered by the non-profit Florida Healthy Kids Corporation, established in s. 624.91, F.S. The Florida Healthy Kids program existed prior to the implementation of the federal Title XXI SCHIP. Florida was one of three states to have the benefit package of an existing child health insurance program grandfathered in as part of the Balanced Budget Act of 1997, which created SCHIP.

The Florida Healthy Kids Corporation contracts with managed care plans throughout the state for the provision of health care coverage. The Healthy Kids Corporation contracts with a fiscal agent to perform initial eligibility screening for the program and final eligibility determination for children who are not Medicaid eligible.

The KidCare application is a simplified application that serves applicants for both the Title XXI KidCare program as well as Title XIX Medicaid. Pursuant to federal law, each application is screened for the child's eligibility for Title XIX Medicaid. The fiscal agent refers children who appear to be eligible for Medicaid to the Department of Children and Family Services for Medicaid eligibility determination, and children who appear to have a special health care need to the CMS Network within the Department of Health for evaluation. If eligible for Medicaid, the child is enrolled immediately into that program. If the child is not eligible for Medicaid, the application is processed for Title XXI and if the child is eligible under Title XXI, the child is enrolled into the appropriate KidCare component.

Medicaid for children and Medikids are administered by AHCA. Medikids uses the Medicaid infrastructure, offering the same provider choices and package of benefits.

The KidCare program requires a two-tiered family premium for program participation. Families under 150 percent of the federal poverty level pay $15 per month and families between 150 percent and 200 percent of the federal poverty level pay $20 per month.

Program Funding

Florida KidCare is financed with a combination of federal, state, and local funds, as well as family contributions. Federal funds come from two sources: the SCHIP, Title XXI of the Social Security Act (requires 29 percent state match), and Medicaid, Title XIX of the Social Security Act (requires 41 percent state match).

The amount of the federal funds available for Title XXI programs is limited for each fiscal year nationally and at the state level. State allotments for a fiscal year are determined in accordance with a statutory formula that is based on two factors: the "Number of Children" and the "State Cost Factor." The variability of state allotments over time is constrained by the application of federal statutorily prescribed floors and ceilings, which limit the amount that allotments fluctuate from year-to-year and over the life of the SCHIP program. In general, state allotments for a fiscal year remain available for expenditure by that state for a 3-year period; the fiscal year of the award and the two subsequent fiscal years. However, any allotment amounts for a fiscal year, which remain available after the three fiscal years, are subject to reallocation to another state. In 2005, Florida received $38,256,995 in redistributed dollars from unspent funds from other states for FY 2002.

KidCare Eligibility

The eligibility requirements for the four KidCare components are as follows:

- Medicaid - for children who qualify for Title XIX (of the Social Security Act) under the following limitations: birth to age 1, up to 200 percent of the FPL (185% - 200% Title XXI); ages 1 through 5, up to 133 percent of the FPL; and ages 6 through 18, up to 100 percent of the FPL.
- Medikids - for children ages 1 through 4 who qualify for Title XXI (of the Social Security Act) with incomes up to 200 percent of the FPL.
- Healthy Kids - for children ages 5 through 18 who qualify for Title XXI up to 200 percent of the FPL.
- CMS Network - for children ages birth through age 18 who have serious health care problems.

In addition, the Department of Health contracts with the Department of Children and Family Services to provide behavioral health services to non-Medicaid eligible children with special health care needs as part of the KidCare umbrella.

Federal and state law, however, have a number of explicit restrictions on eligibility in SCHIP programs funded by federal dollars. In Florida, these restrictions are found in s. 409.814(4), F.S., which specifies the following groups may not receive premium assistance for any component of the Florida KidCare program:

- A child who is eligible for coverage under a state health benefit plan on the basis of a family member's employment with a public agency in the state.
- A child who is currently eligible for or covered under a family member's group health benefit plan or under other employer health insurance coverage, excluding coverage provided under the Florida Healthy Kids Corporation as established under s. 624.91, F.S., provided that the cost of the child's participation in the group health plan or employer health insurance coverage is not greater than 5 percent of the family's income.
- A child who is seeking premium assistance for the Florida KidCare program through employer-sponsored group coverage, if the child has been covered by the same employer's group coverage during the 6 months prior to the family's submitting an application for determination of eligibility under the program.
- A child who is an alien, but who does not meet the definition of qualified alien, in the United States.
- A child who is an inmate of a public institution or a patient in an institution for mental diseases.
- A child who has had his or her coverage in an employer-sponsored health benefit plan voluntarily canceled in the last 6 months.

Children who are ineligible for premium assistance for any of the above reasons may still participate in the Healthy Kids program if they are enrolled in the unsubsidized full-pay category in which the family pays the entire cost of the premium, including administrative costs.

The agency is currently authorized to place limits on enrollment in Medikids by these children in order to avoid adverse selection. The number of children participating in Medikids whose family income exceeds 200 percent of the federal poverty level must not exceed 10 percent of total enrollees in the Medikids program.

The board of directors of the Florida Healthy Kids Corporation is authorized to place limits on enrollment of these children in order to avoid adverse selection. In addition, the board is authorized to offer a reduced benefit package to these children in order to limit program costs for such families. The number of children participating in the Florida Healthy Kids program whose family income exceeds 200 percent of the federal poverty level must not exceed 10 percent of total enrollees in the Florida Healthy Kids program.

III. Effect of Proposed Changes:

Section 1. Amends s. 409.814(5), F.S., to expressly allow children in families with incomes above 200 percent of the federal poverty level or a child excluded from eligibility under s. 409.814(4), F.S., to participate in the Medikids program as provided in s. 409.8132, F.S., or in the Florida Healthy Kids program, if the family pays the entire cost of the premium, including administrative costs, and such enrollees do not exceed 10 percent of total enrollees in either the Medikids program or the Florida Healthy Kids program.

Section 2. Requires the Agency for Health Care Administration to begin enrollment under s. 409.814(5), F.S., as amended by this act, by July 1, 2006.

Section 3. Provides an effective date of July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill could reduce the pressure for some employers to offer dependent health care coverage as these children would now be eligible for Medikids or the Healthy Kids program. This would likely result in lower health care expenditures by the employers.

C. Government Sector Impact:

Agency for Health Care Administration (AHCA)

Requiring MediKids to offer a full pay option for children whose family income exceeds 200 percent federal poverty level would require AHCA to obtain actuarial data to determine the full pay monthly premium. An actuarial study of this kind would cost at least $9,000. This is a one-time expenditure that could be funded from the current Children's Health Care budget; however, 100 percent of the funding would come from General Revenue, as the expenditure would not be eligible for a federal match. An actuarial determination would be needed to determine the risk pool, the monthly premium, and administrative costs.

Florida Healthy Kids has experienced adverse selection, meaning families with children requiring more medical care are more apt to insure their children even though the cost is higher. Families with relatively healthy children may be more likely not to insure their children and take a chance that they will not incur costly medical expenses. Florida Healthy Kids spreads the risk pool for insuring full pay children to include the entire Healthy Kids population. If MediKids was required to offer a full pay option as

previously described, AHCA would need to determine what risk pool to use. The smaller the risk pool, the higher the cost per member.

Since the CMS Network does not offer a full pay option, AHCA will need to decide if the MediKids full pay component will accept children with special health care needs between the ages of 1 and 5, who would have otherwise been enrolled in the CMS Network except that their family income exceeds 200 percent federal poverty level. Accepting children with special health care needs in the MediKids full pay component would increase the full pay cost to all enrolled and the increased cost to the family could translate to adverse selection.

Florida Healthy Kids Corporation is currently facing the situation of adverse selection in their full pay population. They are researching the feasibility of either offering fewer services to this population or increasing the monthly full pay premium. The Florida Healthy Kids Corporation has recently contracted with Ross Health Actuarial to prepare an actuarial analysis of full pay enrollees in the Florida Healthy Kids Program.

Department of Health

The Department of Health states that this bill would have no effect on the department or its programs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.